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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF OREGON

10 KATHLEEN SNIDER,

Civil No. C05-114-AA  
OPINION AND ORDER

11 Plaintiff,

12 vs.

13 JO ANNE B. BARNHART,  
Commissioner of Social Security,

14 Defendant.

15 \_\_\_\_\_  
16 Rory Linerud  
17 Linerud Law Firm  
18 P.O. Box 1105  
19 Salem, Oregon 97308  
20 Attorney for plaintiff

21 Karin Immergut  
22 United States Attorney  
23 District of Oregon  
24 Craig Casey  
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27 Portland, Oregon 97204-2902

28 Johanna Vanderlee  
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701 Fifth Avenue, Suite 2900 M/S 901  
Seattle, Washington 98104-7075  
Attorneys for defendant

AIKEN, Judge:

Claimant, Kathleen Snider, brings this action to obtain  
judicial review of a final decision of the Commissioner denying

1 her claim for Supplemental Security Income (SSI) disability  
2 benefits under Title XVI of the Social Security Act (the Act), 42  
3 U.S.C. §§ 405(g), 1383(c)(3). For the reasons set forth below,  
4 the Commissioner's decision is affirmed.

#### 5 **PROCEDURAL BACKGROUND**

6 Plaintiff filed her application for SSI disability benefits  
7 on November 16, 1999, alleging disability since March 10, 1997  
8 from wrist tendonitis and carpal tunnel syndrome. Tr. 120, 128.  
9 After the Commissioner denied plaintiff's initial application and  
10 again on reconsideration, plaintiff requested a hearing before an  
11 Administrative Law Judge (ALJ). Tr. 53.

12 On November 25, 2002, the ALJ and plaintiff's attorney,  
13 Rory Linerud, appeared for the hearing, but plaintiff failed to  
14 appear and the hearing was reset. Tr. 419-423. On April 29,  
15 2003, plaintiff again failed to appear at the rescheduled  
16 hearing, but her attorney did not object to the ALJ's  
17 determination that plaintiff was a non-essential witness. Tr.  
18 424-431. At the April 29, 2003 hearing, medical expert Lawrence  
19 Cohen, M.D., and vocational expert (VE) Gail Young testified.  
20 Tr. 429-431. On June 23, 2003, the ALJ issued a decision finding  
21 plaintiff not disabled. Tr. 27-38. Upon plaintiff's request,  
22 the Appeals Council remanded the matter to the ALJ for further  
23 evaluation of plaintiff's credibility and for further  
24 proceedings. Tr. 104-105. On May 24, 2004, the ALJ held a third  
25 hearing at which attorney Kimberly Shubin appeared on behalf of  
26 plaintiff, although plaintiff again failed to appear. Tr. 432-  
27 436. Plaintiff filed an affidavit describing her impairments and  
28 symptoms, and stating she failed to appear at this hearing

1 because her car broke down. Tr. 318-320.

2 The ALJ issued a second decision on July 16, 2004, again  
3 finding plaintiff not disabled. Tr. 13-24. On December 13,  
4 2004, the Appeals Council denied plaintiff's request for review,  
5 which made the ALJ's second decision the final order of the  
6 agency. Tr. 6-8.

#### 7 **STATEMENT OF THE FACTS**

8 Plaintiff was born in 1952 and was 47 through 52 years old  
9 during the relevant period from November 1999 to July 16, 2004.  
10 Tr. 13-24, 120. Plaintiff stated she was divorced and had five  
11 grown children. Tr. 318. She lived with her adult son who  
12 received SSI benefits, her friend Margaret Fipps, and Ms. Fipps'  
13 two adult children. Tr. 318. Plaintiff stated she was in  
14 special education from sixth grade through high school because  
15 "she had many childhood illnesses around that time and fell  
16 behind in her school work." Tr. 386-387. She stated that she  
17 had trouble reading, but had never been diagnosed with a learning  
18 disability, and had graduated from high school. Tr. 134, 387.

19 Plaintiff alleged disability due to back pain, wrist  
20 problems, and depression with associated symptoms. Tr. 318-320.  
21 In her affidavit, plaintiff stated she suffers from depression,  
22 chronic back and wrist pain, reading deficiencies, has difficulty  
23 concentrating, sitting, standing, or walking for an extended  
24 period, and has a hard time grasping things. Id. Plaintiff's  
25 medical history during the relevant period includes diagnoses of  
26 chronic back strain, tr. 330, and bilateral wrist tendinitis.  
27 Tr. 347. Nerve conduction test results have been normal. Tr.  
28 337. On at least two occasions, plaintiff's Waddell's tests

1 results have been positive. Tr. 341, 369. A positive Waddell's  
2 test generally indicates that a claimant was responding to a test  
3 that would not show any valid findings of an impairment. Tr. 34.  
4 This test was specifically designed to weed out false reports.  
5 Id.

6 In her daily activities, plaintiff camped with help from  
7 friends, shopped once or twice weekly, socialized with friends,  
8 managed her own finances, drove without difficulty in unfamiliar  
9 places, cooked, did laundry, and vacuumed. Tr. 148, 234, 269,  
10 277, 388, 390-391.

11 Most recently, plaintiff worked for temporary agencies as  
12 a warehouse worker, earning \$429.80 in 2000, her last period of  
13 employment. Tr. 18, 125, 259. She previously held positions as  
14 a scanner, book coverer, janitor and packager, but quit those  
15 jobs because her wrists hurt from repetitive motions. Tr. 129,  
16 320, 387. At the April 29, 2003 hearing, Dr. Lawrence Cohen  
17 stated plaintiff could occasionally lift up to 20 pounds and  
18 frequently less than 10 pounds; stand or walk 6 hours of an 8  
19 hour day; and sit 6 hours of an 8 hour day. Tr. 428-429. At the  
20 same hearing, VE Gail Young stated that a hypothetical individual  
21 could perform Ms. Snider's past work of assembly, putting covers  
22 on books, but possibly not repacking. Tr. 430-431.

#### 23 **STANDARD OF REVIEW**

24 This court must affirm the Secretary's decision if it is  
25 based on proper legal standards and the findings are supported by  
26 substantial evidence in the record. Hammock v. Bowen, 879 F.2d  
27 498, 501 (9th Cir. 1989). Substantial evidence is "more than a  
28 mere scintilla. It means such relevant evidence as a reasonable

1 mind might accept as adequate to support a conclusion."  
2 Richardson v. Perales, 402 U.S. 389, 401 (1971)(quoting  
3 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).  
4 The court must weigh "both the evidence that supports and  
5 detracts from the Secretary's conclusions." Martinez v. Heckler,  
6 807 F.2d 771, 772 (9th Cir. 1986).

7 The initial burden of proof rests upon the claimant to  
8 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486  
9 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate  
10 an "inability to engage in any substantial gainful activity by  
11 reason of any medically determinable physical or mental  
12 impairment which can be expected . . . to last for a continuous  
13 period of not less than 12 months. . . ." 42 U.S.C.  
14 § 423(d)(1)(A).

15 The Secretary has established a five-step sequential  
16 process for determining whether a person is disabled. Bowen v.  
17 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,  
18 416.920. First the Secretary determines whether a claimant is  
19 engaged in "substantial gainful activity." If so, the claimant  
20 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.  
21 §§ 404.1520(b), 416.920(b).

22 In step two the Secretary determines whether the claimant  
23 has a "medically severe impairment or combination of  
24 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.  
25 §§ 404.1520(c), 416.920(c). If not, the claimant is not  
26 disabled.

27 In step three the Secretary determines whether the  
28 impairment meets or equals "one of a number of listed impairments

1 that the Secretary acknowledges are so severe as to preclude  
2 substantial gainful activity." Id.; see 20 C.F.R.  
3 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively  
4 presumed disabled; if not, the Secretary proceeds to step four.  
5 Yuckert, 482 U.S. at 141.

6 In step four the Secretary determines whether the claimant  
7 can still perform "past relevant work." 20 C.F.R.  
8 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not  
9 disabled. If she cannot perform past relevant work, the burden  
10 shifts to the Secretary. In step five, the Secretary must  
11 establish that the claimant can perform other work. Yuckert, 482  
12 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &  
13 (f). If the Secretary meets this burden and proves that the  
14 claimant is able to perform other work which exists in the  
15 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,  
16 416.966.

#### 17 **DISCUSSION**

18 At step one, the ALJ found that plaintiff has not been  
19 engaged in substantial gainful activity. This finding is not in  
20 dispute. At step two, the ALJ found that plaintiff had the  
21 following severe impairments: back strain, wrist tendonitis, and  
22 depression. Tr. 19-20, 23, Finding 2. This finding is in  
23 dispute. At step three, the ALJ found that plaintiff's  
24 impairments did not meet or equal the requirements of listed  
25 impairments. This finding is in dispute. Plaintiff further  
26 disputes the ALJ's finding regarding her residual function  
27 capacity. Finally, at step four, plaintiff disputes the ALJ's  
28 determination that plaintiff can perform her past relevant work.

1 Because the ALJ determined plaintiff could perform her past  
2 relevant work, he never reached step five of the analysis.

3 I. Plaintiff's Residual Function Capacity

4 Plaintiff argues that the ALJ failed to consider the  
5 combined effect of her physical and mental impairments.  
6 Plaintiff alleges that those impairments, taken together, are of  
7 sufficient severity to preclude her from working, and that she is  
8 therefore disabled. Plaintiff argues there is not substantial  
9 evidence to support the ALJ's decision finding plaintiff not  
10 disabled and that the ALJ specifically failed to determine the  
11 mental demands of plaintiff's past work and whether such demands  
12 are consistent with plaintiff's mental and psychological  
13 abilities.

14 The record, however, shows significant consideration and  
15 documentation by the ALJ regarding plaintiff's mental capacity.  
16 Having concluded that plaintiff had severe impairments of  
17 depression, back strain, and bilateral wrist tendinitis that were  
18 not medically severe in step two, the ALJ was required to  
19 determine her physical and mental Residual Function Capacity  
20 (RFC) for performing substantially gainful economic activity  
21 before proceeding to step four. Tr. 18-20. The ALJ found:

22 The claimant retains the capacity to perform the  
23 basic mental activities required for competitive  
24 unskilled work. She is able to understand, remember  
25 and carry out simple instructions, make simple work-  
related decisions, respond appropriately to  
supervisors, co-workers, and unusual work situations,  
and deal with changes in a routine work setting.

26 Tr. 22. This finding was sufficiently supported in the ALJ's  
27 decision and by the record. The ALJ properly relied on a  
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1 consultative psychological evaluation by Cheryl Brischetto,  
2 Ph.D., whose diagnosis showed plaintiff to have logical and  
3 organized thinking, adequate basic reasoning and judgment, and  
4 adequate expressive and receptive language functions. Tr. 389-  
5 390. The ALJ also relied on the psychological evaluations of  
6 Robert Henry, Ph.D. and Dick Wimmers, Ph.D. who opined the  
7 plaintiff had only mild difficulties in maintaining social  
8 functioning. Tr. 20. The ALJ considered these opinions  
9 consistent with the treatment record, which showed that  
10 plaintiff had required no mental health counseling, treatment, or  
11 intervention in recent years. Id.

12 Given the objective medical and other evidence, the ALJ  
13 properly found that plaintiff's combined impairments of  
14 depression, back strain, and wrist tendonitis limited her to  
15 unskilled, light work, with some climbing and postural  
16 limitations. Tr. 22.

## 17 II. Consideration of Mental Demands in Past Relevant Work

18 Plaintiff argues that the ALJ failed to sufficiently pose  
19 proper hypotheticals to the vocational expert in developing the  
20 record. However, the burden falls on plaintiff to establish  
21 exertional demands of past vocational work, and that plaintiff  
22 cannot perform past relevant work. See SSR 82-62, p.3, available  
23 at 1982 WL 31386; 20 C.F.R. §§ 416.912(a), 416.920(f); and  
24 Barnhart v. Thomas, 540 U.S. 20 (2003). An ALJ's duty to develop  
25 the record further is triggered only when there is ambiguous  
26 evidence or when the record is inadequate to allow for proper  
27 evaluation of the evidence. Mayes v. Massanari, 276 F.3d 453,  
28 459-460 (9<sup>th</sup> Cir. 2001)(internal citation omitted).



1 Here, plaintiff's affidavit provides no evidence that her  
2 depression factored into her inability to work. Tr. 318-320.  
3 Further, none of plaintiff's work history reports developed  
4 throughout the years show any indication that mental strain  
5 played any part in plaintiff's inability to work. See for  
6 example, tr. 128, 138. While the ALJ did not specifically limit  
7 the VE's hypothetical to "simple tasks" at the April 29, 2003  
8 hearing, I note that plaintiff's attorney had the opportunity to  
9 query regarding the mental demands on a book coverer or  
10 repackager, but offered no additional questions. Tr. 430-431.

11 The ALJ properly relied on an adequate record to find that  
12 plaintiff was able to perform her past relevant work as an  
13 assembler/book coverer, which was a light exertion, unskilled  
14 job. Because plaintiff is able to return to past relevant work,  
15 she is not disabled.

#### 16 CONCLUSION

17 The Commissioner's decision is based on substantial  
18 evidence, and is therefore, affirmed. This case is dismissed.  
19 IT IS SO ORDERED.

20 Dated this 1 day of March, 2006.

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23  
24 /s/ Ann Aiken

25 Ann Aiken  
26 United States District Judge  
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